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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,377	10/12/2001	Joseph M. Murray	KFI-100	9750
23290	7590	02/25/2004	EXAMINER	
HOLLANDER LAW FIRM, P.L.C.			BECKER, DREW E	
SUITE 305			ART UNIT	
10300 EATON PLACE			PAPER NUMBER	
FAIRFAX, VA 22030			1761	

DATE MAILED: 02/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/976,377

Applicant(s)

MURRAY ET AL.

Examiner

Drew E Becker

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) 1-20 and 41-58 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/21/02.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION***Election/Restrictions***

1. Applicant's election with traverse of group II, claims 21-40, in the response of November 26, 2003 acknowledged. The traversal is on the ground(s) that the apparatus cannot be used with other methods and products, that the product cannot be made by other methods and devices, and that the method cannot make other products or be done by other devices. This is not found persuasive. Regarding the apparatus, the strips of food are not positively recited as being part of the apparatus. The apparatus claims are being construed as apparatus for segmenting a strip of food. That is, the apparatus is capable of segmenting strips of food. Furthermore, the apparatus required a roller knife, while the method did not and could have been carried out by water knives, as shown by Zimmermann et al (Figure 1, #62 & 64). Regarding the product, one could readily take preformed strips of food, place them on a support material, and then roll it up by hand.

The requirement is still deemed proper and is therefore made FINAL.

Specification

2. The abstract of the disclosure is objected to because it exceeds 150 words in length. Correction is required. See MPEP § 608.01(b).

Art Unit: 1761

Oath/Declaration

3. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

The full name of each inventor (family name and at least one given name together with any initial) has not been set forth. Specifically, William R. Drummond is missing.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 21-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claims 21 and 26 recite "its". It is not clear what "it" is.

7. Claim 21 recites the limitation "its respective support strip". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 1761

9. Claims 21-31, 33-38, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmermann et al [Pat. No. 5,205,106] in view of McHale et al [Pat. No. 5,538,742].

Zimmermann et al teach a method of rolled foods by conveying multiple parallel strips of food on a support material (Figure 1, #14 & 16), segmenting the food by embossing figures or shapes into it (Figure 1, #108), cutting all the way through the strips and support material to form and leading and trailing ends (Figure 1, #64), rolling the food (Figure 1, #74), embossing the same repetitive figure or a different figure (column 9, lines 9-28), the food being at a temperature of about 75 to about 90°F (column 4, line 54), and about 8 to 16 strips (Figure 1, #14). Zimmermann et al do not recite segmenting across the entire width of the food, a scoring roller with knives, 15-50% nicked edge, and the use of 8-16 strips at a time. McHale et al teach a method of making rolled foods by segmenting across the entire width of the food (Figures 1) with a scoring roller having knives (Figure 14, #123). It would have been obvious to one of ordinary skill in the art to incorporate the width-wise segmenting and scoring roller of McHale et al into the invention of Zimmermann et al since both are directed to making rolled foods, since Zimmermann et al already included segmenting and rollers (column 9, lines 9-28; Figure 1, #18 & 20), since rollers were a convenient means of providing continuous cutting and scoring as shown by McHale et al, and since the width-wise segmenting of McHale et al would have provided better portioning of the food product of Zimmermann et al. It would have been obvious to one of ordinary skill in the art to use a 15-50% nicked blade in the invention of McHale et al since McHale et al already

Art Unit: 1761

included a scoring blade (Figure 14, #123) which would have required nicks and since this would have been done during the course of normal experimentation and optimization in order to aid formation of the rolled food.

10. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmermann et al, in view of McHale et al, as applied above, and further in view of WO 97/33822.

Zimmermann et al and McHale et al teach the above mentioned concepts. Zimmermann et al and McHale et al do not teach applying an edible adhesive. WO 97/33822 teaches a method of making rolled foods by applying an edible adhesive (page 16, line 5). It would have been obvious to one of ordinary skill in the art to incorporate the edible adhesive of WO 97/33822 into the invention of Zimmermann et al, in view of McHale et al, since all are directed to making foods, since Zimmermann et al already included rolling (Figure 1, #74), and since the edible adhesive of WO 97/33822 (page 16) would have prevented the rolled food of Zimmermann et al from unrolling.

11. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmermann et al, in view of McHale et al, as applied above, and further in view of Jens et al [Pat. No. 6,217,309].

Zimmermann et al and McHale et al teach the above mentioned concepts. Zimmermann et al and McHale et al do not teach a flat knife. Jens et al teach a method of making food by use of a flat knife (Figures 3-4, #20). It would have been obvious to one of ordinary skill in the art to incorporate the flat knife of Jens et al into the invention of Zimmermann et al, in view of McHale et al, since all are directed to making foods, since


Art Unit: 1761

Zimmermann et al already included cutting (Figure 1, #64), since McHale et al already included a cutting roller (Figure 14, #123), and since the flat knife of Jens et al was particularly well suited to making complicated embossments (Figure 1).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Thur. 8am-5pm and every other Fri. 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Drew E Becker
Primary Examiner
Art Unit 1761
2-18-09